IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO.2798 of 2003

Between:

1 Yadla Lava Kumar, s/o Anjaiah,
R/o 1-45-18, Mamidi Battulavari Street, Nazarpet, Tenali.,
Guntur District.
2 Mr.Abdul Wahab, S/o. Shaik Fareed,
R/o 15-13-239, RTC Colony., 3rd Lane, Guntur.

...PETITIONERS

AND

1. The Government of India through its Secretary, Ministry of Civil Supplies and Consumer Affairs, Krishi Bhavan, New Delhi.

2. The Director, Legal Metrology, Government of India, Ministry of Civil Supplies and Consumer Affairs, Krishi Bhavan, New Delhi.

3. State of Andhra Pradesh through its Principal Secretary to Government, Food, Civil Supplies and Consumer Affairs (CS.III) Department at Secretariat, Hyderabad.

4. The Controller, Legal Metrology, Andhra Pradesh at Gandhinagar, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of a Writ of Certiorari, to call for the records pertaining to the amendments effected to Rule 14(1) of A.P.Standards of Weights and Measures Rules 1986 vide G.O.Ms.No.77 dt.29-9-2000 on the file of the 3rd respondent, and quash the same by declaring the amendment proviso as ultra vires to section 24(2) of the Standards of Weights and

Measures (Enf) Act, 1985 as arbitrary, illegal and in violation of the principles of Natural Justice.

Counsel for the Petitioners: MRS.P.BEENA

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court made the following:

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.2798 of 2003

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ORDER:

The petitioners are residents of Guntur District and claim to be consumers of domestic and general items of human consumption which they purchase from the local markets. The commercial weights used in such trades and commerce, are of cast iron. Under the Standards of Weights and Measures (Enforcement) Act, 1985 (Central Act 54 of 1985), the State Government had issued A.P.Standards of Weights and Measures (Enforcement) Rules, 1986 ('the Rules' for brevity). Rule 14(1) of the Rules reads as under:

> "Every weight or measure used or intended to be used in any transaction for industrial production or for production shall be verified or re-verified once in 12 months".

To these Rules, the State Government, in G.O.Ms.No.77 Food, Civil Supplies and Consumer Affairs (CS.III) Department, dated 29.09.2000 has added a proviso as follows:

> "Provided further that Cast Iron Weights, Cylindrical knob type Weights, Bullion Weights, Sheet metal Weights, Carat Weights, Beam scales, Counter machines and liquid capacity measures (dipping measure, pouring measure and conical measure) shall be re-verified and stamped once in a period of twenty four months".

Be the above amendment to the Rules, the period of re-verification has been increased from 12 months as provided under Rule 14(1) to 24 months insofar as cast iron Weights, Cylindrical knob type Weights, Bullion Weights, Sheet metal Weights, Carat Weights, Beam scales, Counter machines and liquid capacity measures, are concerned. In substance, the challenge is (a) that the amendments in the year 2000 and the impugned G.O. have been issued without any survey, data collection or appointment of a commission to ascertain the need to enhance the period of re-verification, (b) that raising the period of

re-verification from 12 to 24 months when the population, number of consumers and use of weights and measures has increased, is illegal and arbitrary, (c) that there is no justification for the amendment and (d) that when for platform scales and weigh bridges, the verification period is 12 months and continues to be so, in respect of the weights and measures enumerated in the impugned amendment which are made from the same material, increase in the verification period constitutes an illogical exercise of power of rule making.

The fourth respondent has filed a counter-affidavit stating that the Government of India had recommended enhancing of the periodicity of re-verification of the weights and measures specified in the impugned amendment and consequently, the State Government had issued a notification vide G.O.Ms.No.77, dated 29.09.2000. It is also contended that the Government of India had, after conducting a survey on the subject of wear and tear of cast iron weights and measures had observed that wear and tear within 12 months is very negligible and within the limits of tolerance. It was found by the Government of India on such survey

and opinion obtained from the National Physical Laboratory, that within an year repeated use of certain weights does not lead to any appreciable loss and beyond the tolerance limits and therefore, it was decided to enhance the period of re-verification from 12 to 24 months.

Regarding the other contention that the amendment is contrary to Rule 14 (1) of the Rules, which has been left intact, the respondent rightly contends that the amendment is by way of a proviso to Rule 14 (1) of the Rules and therefore is in the nature of an exception. As a State Government is competent to issue the rules, it is competent to issue the amendment which is in the nature of a proviso and therefore, an exception to the provisions of Rule 14 (1) of the Rules. As the proviso is in the nature of an exception which excepts from the provisions of Rule 14 (1) of the Rules, certain categories of weights and measures for enhancing the period of re-verification, this is a legitimate exercise of rule making power, in the substance of the respondents' contention.

Having regard to the averments in the counter-affidavit to which no demurral is entered by the writ petitioner, it is apparent that the amendments were issued after conducting a survey by the Government of India as to the wear and tear potentiality of the weights and measures specified by the impugned amendments. On a critical assessment of the relevant facts and parameters as to the periodicity that should be specified for re-verification of certain categories of weights and measures on the basis of empirical data collected, the Government of India as the federal agency, had issued appropriate instructions to the State Government requesting amendment of the Rules to provide a different period and periodicity for re-verification of certain

classes of weights and measures. This judgment is the product of a policy decision by the Union Government and State Government taken after considering the relevant data and after a survey for the purpose. *Ex facie* nothing is pleaded, urged or administered by the petitioners to come to a conclusion that the impugned amendment is either ultra vires the provisions of the Act or inconsistent with the ratio of the Rules nor it is arbitrary.

On the above analysis, no is case made out for interference. Accordingly, the Writ Petition is dismissed, but in the circumstances with costs.

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(GODA RAGHU RAM, J)

11th February 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Secretary, Government of India, Ministry of Civil Supplies and Consumer Affairs, Krishi Bhavan, New Delhi.
2. The Director, Legal Metrology, Government of India, Ministry of Civil Supplies and Consumer Affairs, Krishi Bhavan, New Delhi.
3. The Principal Secretary to Government, State of Andhra Pradesh, Food, Civil Supplies and Consumer Affairs (CS.III) Department at Secretariat, Hyderabad.
4. The Controller, Legal Metrology, Andhra Pradesh at Gandhinagar, Hyderabad.
5. Two CCs to GP for Civil Supplies, High Court Buildings, Hyderabad (OUT).
6. Two CD copies.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH, AT HYDERABAD

WRIT PETITION NO.2798 OF 2003

MEMORANDUM OF COSTS

Respondents ( ) Rs. Ps.

Stamp for Vakalatnama……. 5 – 00

Advocate's Fee (Not certified

By the Advocate)…… -------

Translation and Printing Charges……. -------

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To be paid by the Petitioner to the respondent 5 – 00

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Assistant Registrar

(To be attached to the order, dated and made in C.M.P.No. of 200 and dispatched on)